SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 14

UNITED STATES OF AMERICA, APPELLANT,

vs.

FIVE GAMBLING DEVICES, LABELED IN PART, "MILLS," AND BEARING SERIAL NUMBERS 593,221; 578,827; 583,708; 578,831, AND 581,162

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

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1 [File endorsement omitted]

In United States District Court for the Middle District of Tennessee, Columbia Division

Civil No. 286

UNITED STATES OF AMERICA

vs.

FIVE GAMBLING DEVICES, LABELED IN PART, "MILLS," AND BEARING SERIAL NUMBERS 593221; 578827; 583708; 578831; AND 581162

LIBEL OF INFORMATION—Filed September 11, 1952

1. Jurisdiction is founded on the fact that the libelant is the United States of America.

2. In July and October, 1951, Edwin Haley Clement and William King Wallis, doing business as Automatic Music Company, were dealers in gambling devices, within the meaning of Title 15, Sections 1171, et seq., United States Code, who had failed to register with the Attorney General of the United States, as required by Title 15, Section 1173, United States Code, and sold to the Greymere Country Club, Columbia, Tennessee, five gambling devices, the description of which is set forth in the caption hereof, and is set forth below, without reporting the details of said sale to the Attorney General of the United States, as required by Title 15, Section 1173, United States Code.

3. On March 3, 1952, the following machines were seized by agents of the Federal Bureau of Investigation at the Grey-
2 mere Country Club, Columbia, Tennessee:

1. Mills, Serial No. 593221
2. Mills, Serial No. 578827
3. Mills, Serial No. 583708
4. Mills, Serial No. 578831
5. Mills, Serial No. 581162

4. The machines set forth above are now in possession of the United States Marshal and in storage at Bond-Chadwell Company, Nashville, Tennessee.

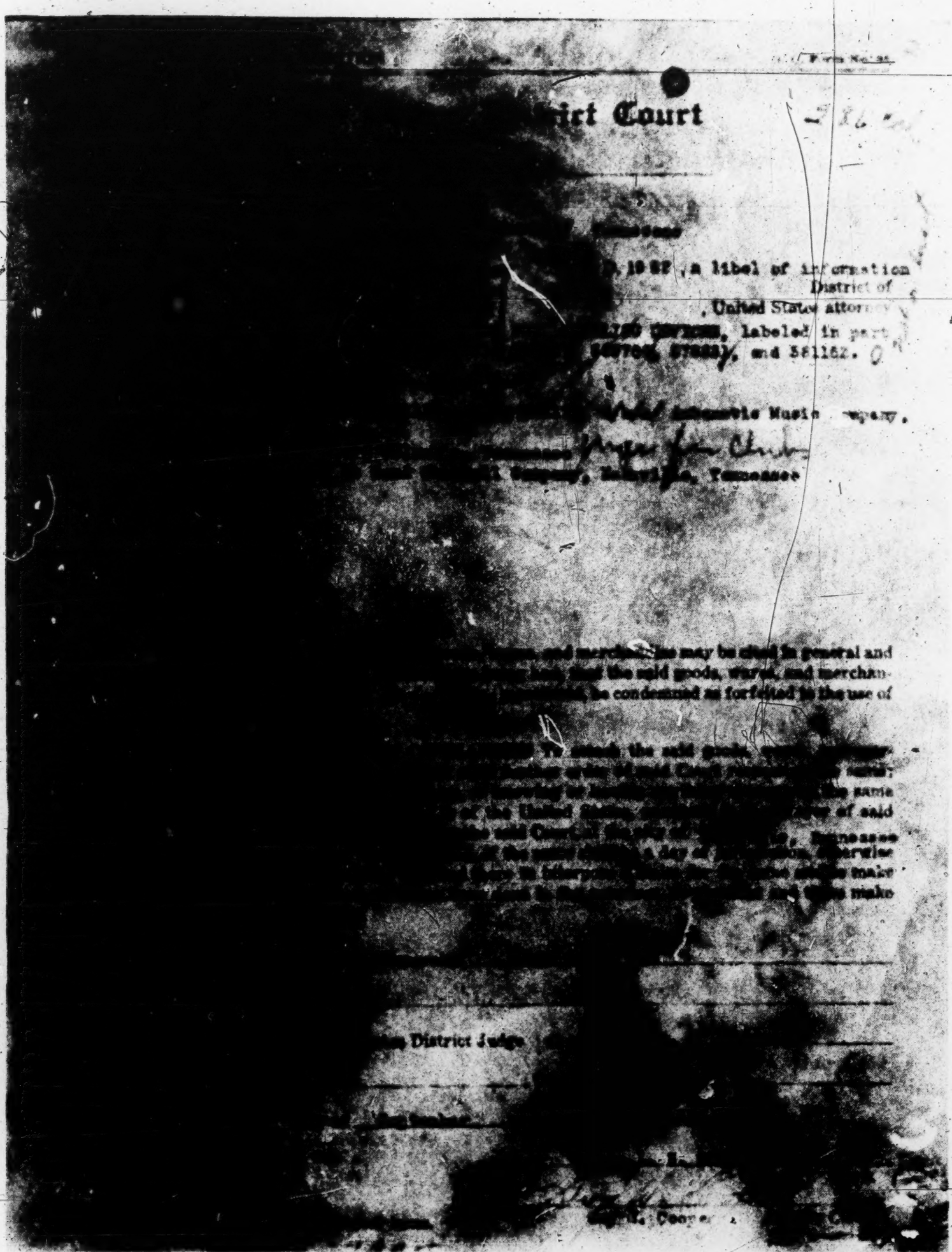
5. By reason thereof, and according to Title 15, Section 1177, United States Code, the said gambling devices became and are forfeited to the United States of America.

WHEREFORE, libelant prays that process and due form of law, according to the course of this Court in cases of admiralty jurisdiction, issue against the aforesaid devices to enforce the forfeiture;

that notice be given to all persons concerned in interest to appear and show cause at the return date of the process why the forfeiture should not be decreed; that the devices be disposed of as the Court may direct; and that libelant have such other and further relief as the case may require.

DICK L. JOHNSON,
United States Attorney.

(Here follow 2 photostats, folios 3 and 4.)



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Music Company,
Judges of Chancery
, Tennessee

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and the said goods, wares, and merchan-
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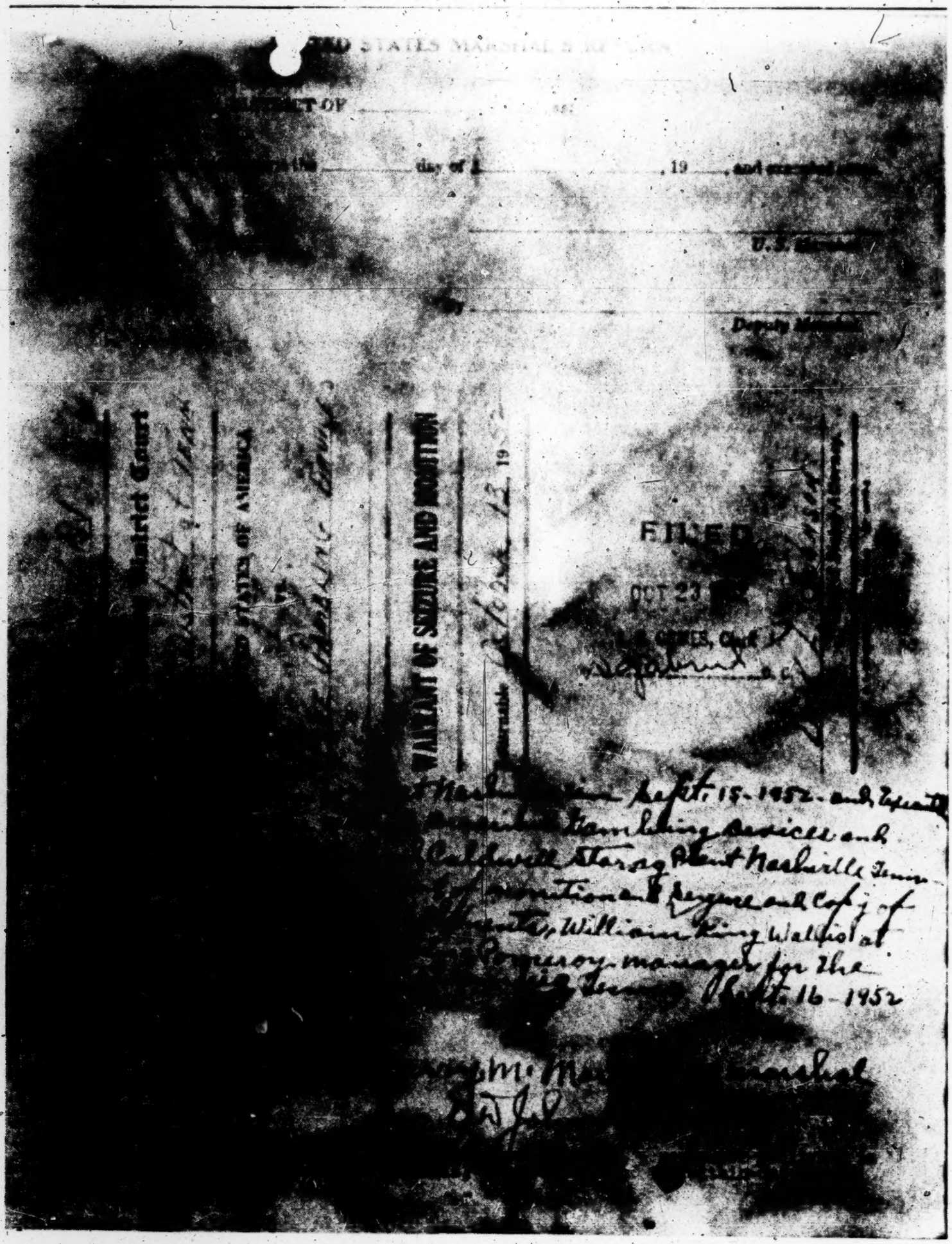

UNITED STATES MARSHAL'S SERVICE

DISTRICT OF

day of , 19 , and executed

U.S. Marshal

By

Deputy Marshal

District Court

STATES OF AMERICA

AFFIDAVIT OF SERVICE AND POSITION

FILED

OCT 23

CLERK, U.S. DIST. COURT

Deputy Clerk

Sept. 15-1952 and Exhibit
Gambling devices and
Caldwell Storage Co. Nashville Tenn
Exhibit and Copy of
William King Wallace at
Company manager for the
Sept. 16-1952

Marshal

5 [File endorsement omitted]

In the United States District Court

[Title omitted]

INTERVENING PETITION—Filed October 13, 1952

To the Honorable Elmer D. Davies, United States District Judge for the Middle District of Tennessee:

And now comes your Petitioner Greymere Country Club of Columbia, Tennessee and files this its intervening petition in the above styled cause, and would respectfully state and show unto the Court as follows:

I

This suit was begun by a Libel of Information filed by the United States Attorney for the Middle District of Tennessee. It is a proceeding in Rem and is filed against the five machines described in the caption hereof. These five machines were bought and paid for by your Petitioner, and Petitioner avers that it has the right to have the forfeiture against said machines remitted and dismissed for the following reasons:

The Libel of Information in this case was based upon Section 3 of Public Law 906 passed by the Congress of the United States and approved by the President on January 2, 1951.

Specifically the Libel of Information was filed and the five machines were seized under and by virtue of Section 3 of the Act, which is as follows:

"Sec. 3. Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the 1st day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries.

For the purposes of this Act, every manufacturer or dealer
6 shall mark and number each gambling device so that it is individually identifiable. In cases of sale, delivery, or ship-

ment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries.

II

Your Petitioner now avers and insists that the above quoted section 3 is unconstitutional and void for the reason that it is in contravention of the Tenth amendment of the Constitution of the United States, such amendment being as follows:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people".

Petitioner states that the Libel of Information filed in this case is based solely upon the proposition that the dealer who sold these machines to Petitioner failed to register with the Attorney General of the United States, as required by Title 15, Section 1173 and that such dealer failed to report the details of said sale to the Attorney General of the United States as required by the same Title and Section.

Petitioner would respectfully represent and show to the Court that the Congress of the United States does not have the power or the authority to pass a law requiring a citizen of Tennessee to register his business with the Attorney General nor to report to the Attorney General the details of sales made by such citizen of Tennessee.

Public Law #906 is in no sense a taxing statute and Section 3 of the Act is clearly an infringement upon the police powers of the State of Tennessee, and your Petitioner now insists that such a power as Section 3 undertakes to give the Government, is not a power delegated to the United States by the Constitution nor is such attempted power prohibited by the Constitution of the United States to the several States. This being true the power to regulate machines and report the details of the sale of machines is a power reserved to the State of Tennessee and therefore your Petitioner insists that Public Act #906 passed January 2, 1951, and that especially Section 3 thereof is unconstitutional and void.

7 III

WHEREFORE, your Petitioner comes into this Honorable Court praying for a judgment as to whether or not said Section 3 of said Public Act #906 passed January 2, 1951 is Constitutional or unconstitutional, and Petitioner prays that your Honor hold said Section 3 unconstitutional; that the seizure of Petitioner's property be declared to have been done pursuant to an unconstitutional act of Congress; and that the United States Marshal of this District be directed by your Honor to release to petitioner said machines described in the caption without costs to your Petitioner.

FRIERSON & QUEENER,
By HORACE FRIERSON,
Attorneys for Petitioner.

Duly sworn to by Floyd B. Bowen. Jurat omitted in printing.

8 In United States District Court for the Middle District of Tennessee Columbia Division

Civil No. 286

UNITED STATES OF AMERICA,

vs.

FIVE GAMBLING DEVICES, labeled in part, "Mills", and bearing Serial numbers 593221, 578827, 583708, 578831, and 581162.

ORAL OPINION

The Court—I agree with Judge Briggle of the United States District Court of the Southern District of Illinois, in his opinion in two libel cases entitled *United States* v. *168 Gambling Devices*, and *United States* v. *48 Gambling Devices*. It does not appear anywhere at all that these machines were ever shipped in interstate commerce after the passage of the act, and if they had not been shipped in interstate commerce, after the passage of the act, Congress would have no right to legislate against them. As pointed out by Judge Briggle Congress might have a right to proceed against the dealer for selling the machines, but this is not a proceeding of that kind. This is a proceeding against the machines themselves, and it not appearing that there is any interstate commerce connected with the seizure, or that the machines were ever shipped in interstate commerce after the passage of the act, Congress has no right to make any regulations as to purely intrastate matters. These machines might very well have been purchased before the passage of the act in question and stored here in the state of Ten-

nessee, and in all probability they were, and shipped after the act in question was passed, to the purchaser at Columbia, Tennessee.

Well, that would be an intrastate shipment, and Congress
9 would have no right to legislate realtive to that matter.

I am of the opinion that the seizure in this case is illegal, that the libel was not justified, and the machines will be ordered returned to the petitioner.

10 In United States District Court for the Middle District of Tennessee Columbia Division

November 19, 1952

Civil No. 286

UNITED STATES OF AMERICA

vs.

FIVE GAMBLING DEVICES, labeled in part, "Mills", and bearing Serial numbers 593221; 578827; 583708, 578831, and 581162

ORDER OF DISMISSAL—Filed November 21, 1952

This cause came on to be heard upon the libel of information filed by the United States of America, and the intervening petition of the Graymere Country Club; and it appearing to the Court that it is agreed that the facts set forth in the libel and the intervening petition are true and correct, the Court after hearing argument, was of the opinion that Section 1173, Title 15, United States Code, as applied in this cause, is unconstitutional.

It is therefore Ordered and Adjudged that the libel be and hereby is dismissed and that the gambling devices seized be returned, to petitioner Graymere Country Club.

10a It further appearing to the Court that the gambling device labeled in part "Mills", and bearing Serial No. 581162, was seized by the United States.

It is hereby Ordered and Adjudged that the libel be amended by striking the gambling device not seized from the caption and body thereof.

ENTER:

(S.) ELMER D. DAVIES
United States District Judge

O.K.

(S.) DICK L. JOHNSON
United States Attorney

(S.) HORACE FRIERSON
Attorney for Intervening Petitioner

NOVEMBER 21, 1952

11 (File endorsement omitted)

In the United States District Court

Libel # 26

UNITED STATES OF AMERICA

vs.

FIVE GAMBLING DEVICES

Before the Hon. Elmer D. Davies, Judge of said Court, at Columbia, Tennessee, on November 19, 1952.

APPEARANCES: James L. Roberts, Asst. U. S. Dist. Atty.
For the Government

Frierson & Queener, For Defendant Graymere Country Club

MEMORANDUM OF THE COURT—Filed December 17, 1952

The COURT: Gentlemen, I am ready to pass on the law of this case of United States against Five Gambling Devices, but it occurs to me, no evidence has been adduced in the case, no stipulation as to what the facts are. Can you stipulate that the facts set out in the answer or the petition are the true facts in this case?

Mr. ROBERTS: If your Honor please, I believe that none of the facts set out in the libel were denied, and would be taken as admitted.

The COURT: The petition sets out certain facts, in the petition. As I understood the facts, these machines were just seized there at the property of the petitioner, the Graymere Club, is that right?

Mr. ROBERTS: That's correct.

The COURT: That's all the evidence the Government would have.

Major FRIERSON: That's all the evidence the Government would have.

The COURT: The petition and pleadings, though, don't con-
12 stitute the evidence. If you are willing to stipulate that those are the facts, I am ready to go ahead and pass on it.

Mr. ROBERTS: Yes, sir, we will stipulate.

Major FRIERSON: That the facts are as stated in the petition and pleadings.

The COURT: I agree with Judge Briggle of the United States District Court of the Southern District of Illinois, in his opinion in two libel cases entitled United States against 178 Gambling Devices, and United States against 48 Gambling Devices. It doesn't appear anywhere at all that these machines were ever shipped in interstate commerce after the passage of the act, and if they hadn't

been shipped in interstate commerce, after the passage of the act, Congress would have no right to legislate against them. As pointed out by Judge Briggle Congress might have a right to proceed against the dealer for selling the machines, but this is not a proceeding of that kind. This is a proceeding against the machines themselves, and it not appearing that there is any interstate commerce connected with the seizure, or that the machines were ever shipped in interstate commerce after the passage of the act, Congress has no right to make any regulations as to purely intrastate matters. These machines might very well have been purchased before the passage of the act in question and stored here in the State of Tennessee, and in all probability they were, and shipped after the act in question was passed, to the purchaser at Columbia, Tennessee. Well, that would be an intrastate shipment, and
13 Congress would have no right to legislate relative to that matter.

I am of the opinion that the seizure in this case is illegal; that the libel was not justified, and the machines will be ordered returned to the petitioner.

Enter. Elmer D. Davies, U. S. District Judge.

14 [File endorsement omitted]

In United States District Court

[Title omitted]

PETITION FOR APPEAL—Filed December 22, 1952

Considering itself aggrieved by the judgment of this court entered November 21, 1952, the United States, plaintiff herein, prays that an appeal be allowed to the Supreme Court of the United States from said judgment and from each and every part thereof; that citation be issued in accordance with law; that the execution of the judgment be stayed pending final disposition of the appeal and that the material parts of the record, proceedings and papers upon which said judgment and decree was based be sent to the Supreme Court of the United States in accordance with the Rules in such case made and provided.

Respectfully submitted,

WALTER J. CUMMINGS, JR.
Solicitor General,
Counsel for Plaintiff.

15 In the United States District Court

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 22, 1952

The United States, having filed its petition praying for an appeal to the Supreme Court of the United States from the judgment of this court in this cause entered November 21, 1952 and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court in such cases made and provided:

Now, Therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that execution of the judgment be stayed until the termination of this appeal.

It is further ordered that citation shall issue in accordance with law.

ELMER D. DAVIES,
Judge of the District Court.

16 Citation in usual form omitted in printing.

17-24 In United States District Court

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYERS FOR REVERSAL—Filed December 22, 1952

The United States, plaintiff in the above-entitled cause, in connection with its appeal to the Supreme Court, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the judgment of the District Court entered November 21, 1952.

The District Court erred:

(1) In dismissing the libel of information for forfeiture.

(2) In holding that 15 U.S.C. 1173 is unconstitutional as applied in this cause.

(3) In holding that Congress does not have the power to declare subject to forfeiture gambling machines sold within the State of Tennessee by a dealer who failed to register and make reports as required by 15 U.S.C. 1173.

Wherefore, plaintiff prays that the judgment of the District Court be reversed and for such other and further relief as the Court may deem fit and proper.

WALTER J. CUMMINGS, JR.,
Solicitor General.

December 19, 1952.

25 Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court (Omitted in printing)

26 PROOF OF SERVICE (omitted in printing)

27 PRAECIPE (omitted in printing)

28 In the United States District Court

[Title omitted]

ORDER AMENDING ORDER OF November 21, 1952—Filed December 23, 1952

[File endorsement omitted.]

In the above styled cause, it is ordered that the order entered herein on November 21, 1952, be amended by adding at the end of the first paragraph thereof, the following words:

"in so far as it applies to purely intrastate matters."

This 22nd day of December, 1952.

ELMER D. DAVIES,
United States District Judge.

29-30 Clerk's Certificate to foregoing transcript omitted in printing.

31 In United States District Court

[Title omitted]

DOCKET ENTRIES

Sept. 11, 1952, Libel of Information filed.
Sept. 11, 1952, Warrant of Seizure & Monition issued and returned showing service.
Oct. 13, 1952, Intervening Petition of Greymore Country Club filed.
Nov. 19, 1952, Oral Opinion of the Court filed.
Nov. 21, 1952, Order of Dismissal entered.
Dec. 17, 1952, Memorandum of the Court entered.

Dec. 22, 1952, Petition for Appeal filed.
Dec. 22, 1952, Order Allowing Appeal entered.
Dec. 22, 1952, Citation on Appeal entered.
Dec. 22, 1952, Assignment of Errors and Prayers for Reversal filed.
Dec. 22, 1952, Statement as to Jurisdiction filed.
Dec. 22, 1952, Statement Required by Rule 12 filed.
Dec. 22, 1952, Proof of Service Required by Rule 12 filed.
Dec. 22, 1952, Praecipe filed.
Dec. 23, 1952, Order entered amending Court's Order of Nov. 21, 1952.

32 In the Supreme Court of the United States

October Term, 1952

No. 558

UNITED STATES OF AMERICA

v.

FIVE GAMBLING DEVICES, labeled in part, "Mills," and bearing Serial numbers 593221; 578827; 583708; 578831 and 581162

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed February 10, 1953

[File endorsement omitted.]

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in dismissing the libel of information for forfeiture.
2. The District Court erred in holding that Section 3 of the Act of January 2, 1951 (64 Stat. 1135, 15 U.S.C. 1173) is unconstitutional as applied in this case.
3. The District Court erred in holding that Congress does not have the power to declare subject to forfeiture gambling devices sold within the State of Tennessee by a dealer who failed to register and make reports as required by Section 3 of the Act of January 2, 1951 (*supra*).

Appellant deems all parts of the record as filed in the above entitled case necessary for the consideration of the points to be relied on *except* the following portions:

33-35 1. The citation on appeal (p. 16);
2. Statement as to Jurisdiction (p. 18-24 inclusive);

3. Statement under Rule 12 (p. 25);
4. Proof of Service under Rule 12 (p. 26);
5. Praecipe (p. 27);

WALTER J. CUMMINGS, JR.,
Solicitor General.

February 10, 1953.

36 Supreme Court of the United States
No. 558 ——, October Term, 1952

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—May 25, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

☆ U. S. GOVERNMENT PRINTING OFFICE 1953 801737 1788

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 730

UNITED STATES OF AMERICA, APPELLANT

vs.

ROSCOE DENMARK

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

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257817—53

1 [Caption omitted.]

2 In United States District Court for the Southern District of Georgia, Savannah Division

No. 13393

Vio: T. 15, U. S. C. A. Sec. 1173

UNITED STATES OF AMERICA

v.

ROSCOE DENMARK

Indictment

Filed May 13, 1952

COUNT ONE

The Grand Jury Charges:

That from on or about January 3, 1951, to on or about August 31, 1951, ROSCOE DENMARK did, in the Savannah Division of the Southern District of Georgia, unlawfully, wilfully and knowingly engage in the business of a dealer in gambling devices without having registered with the Attorney General of the United States his name, trade name, and address of his principal place of business, and the addresses of his places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT TWO

The Grand Jury Further Charges:

That on or about June 30, 1951, within the Savannah Division of the Southern District of Georgia, the said ROSCOE DENMARK, a dealer in gambling devices, having sold and delivered a gambling device, to wit: one Pace Slot machine, to Milton M. Braun, Savannah, Georgia, on or about May 15, 1951, unlawfully, wilfully and knowingly failed to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of May 31, 1951 for his place or places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT THREE

The Grand Jury Further Charges:

That on or about July 31, 1951, within the Savannah Division of the Southern District of Georgia, the said ROSCOE DENMARK, a

dealer in gambling devices, having sold and delivered a gambling device, to wit: one Pace slot machine, to Nash Antonopolo, Savannah, Georgia, on or about June 23, 1951, unlawfully, wilfully and knowingly failed to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of June 30, 1951 for his place or places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT FOUR

The Grand Jury Further Charges:

That on or about August 31, 1951, within the Savannah Division of the Southern District of Georgia, the said ROSCOE DENMARK, a dealer in gambling devices, having sold and delivered thirteen (13) gambling devices, to wit: one Buckley Long Shot gambling device; nine (9) Buckley Track Adds gambling devices, and three (3) Evans Bangtail gambling devices, to Dukes Novelty Company, Savannah, Georgia, on or about July 5, 1951, unlawfully wilfully and knowingly failed to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of July 31, 1951, for his place or places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

A True Bill.

(Signed) F. F. BAGGETT,
Foreman.

J. SAXTON DANIEL,
United States Attorney.
(Signed) DONALD H. FRASER.
Assistant United States Attorney.
(*Signed*) JULIAN HARTRIDGE,
Assistant United States Attorney.

4 [File endorsement omitted.]

5 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Motion to dismiss indictment

Filed November 10, 1952

The defendant, Roscoe Danmark, moves that the indictment in the above entitled cause, and each and every count thereof, be dismissed on the following grounds:

1. Title 15, U. S. C., Section 1173 (Act of Congress approved January 2, 1951, Public Law 906, 64 Stat. 1135), upon which the indictment, including all counts thereof, is based, is unconstitutional and invalid for the reasons:

(a) Said Title 15, U. S. C., Section 1173 undertakes by its provisions to require, among other things, that manufacturers of and dealers in gambling devices register with the Attorney General his name or tradename, the address of his principal place of business, and the addresses of his place of business in such district, and to file with the Attorney General a monthly inventory and record of all sales and deliveries of gambling devices for the place or places of business in the district, showing the mark and number identifying each article, together with the name and address of the buyer or consignees thereof, and the name and address of the carrier, and that each gambling device be marked and numbered, which requirements invades the jurisdiction of the State by undertaking to regulate matters local in their nature and wholly intrastate and within the exclusive legislative and police powers of the States and not within the powers delegated to the Congress of the United States by Article 1, Section 8, Clause 3 of the Constitution of the United States relating to the regulation of interstate commerce, and the said provisions of Title 15, U. S. C., 1173 are, for the reasons above shown, in violation of the Tenth Amendment to the Constitution of the United States reserving to the States the powers not delegated to the United States by the Constitution.

6 (b) The provisions of Title 15, U. S. C., Section 1173 have the effect of requiring manufacturers of and dealers in gambling devices to furnish evidence against themselves, in violation of the Fifth Amendment to the Constitution of the United States which provides, among other things, * * * "nor be compelled in any criminal case to be a witness against himself * * *."

2. That Title 15, Section 1173 (Act of Congress approved January 2, 1952, Public Law 906, Section 3) of United States Code is invalid and incapable of enforcement for the following reason:

(a) Said Section requires manufacturers of and dealers in gambling devices to register with the Attorney General his name or tradename, the address of his principal place of business, and the addresses of his place of business "in such district," and fails to designate and identify the district referred to in said statute as "such district."

(b) Said Title 15, Section 1173 is invalid and incapable of enforcement for the reason that it is impossible to determine from the provisions of said statute or from said Act of Congress as a whole what district is referred to by the languages "such district."

(c) That the language "Such district" does not define any area or geographical subdivision and as such is incapable of ascertainment.

3. Defendant moves the Court to dismiss Count I of the said indictment upon the further ground that said Count I and the indictment fails to allege when the defendant first engaged in business.

4. Defendant moves the Court to dismiss Counts 2 and 3 of said indictment upon the further grounds that each of said Counts fail to allege that the transaction therein charged were committed prior to or after the defendant first engaged in business.

5. Defendant moves to dismiss the indictment and each and every count thereof upon the further ground that all of said counts and each of them fail to allege that the defendant was engaged in the business of a dealer in gambling devices in interstate commerce.

7 Wherefore, defendant prays that the grounds of this motion be inquired of by the Court and that the indictment and each count thereof be dismissed.

BRANNEN, CLARK, & HESTER,
By (Signed) PERRY BRANNEN,
(Signed) G. B. EVERITT,
Defendant's Attorneys.

[Proof of service omitted in printing.]

7A In United States District Court for the Southern District of Georgia, Savannah Division

Indictment No. 13393

Vio: Title 15, U. S. C. 1173

UNITED STATES OF AMERICA

v.

ROSCOE DENMARK

Opinion and order dismissing indictment

Filed February 25, 1953

An indictment in four counts was returned against Roscoe Denmark charging violations of Title 15 U. S. C. 1173. The first count charges that defendant was a dealer in gambling devices and failed to register with the Attorney General of the United States. The remaining counts of the indictment charge that the defendant sold and delivered gambling devices to the persons named in the respective counts within the Savannah Division of the Southern District of Georgia and did not file inventories and records of the sales with the Attorney General.

By motion to dismiss the indictment timely filed and presented, the defendant contends that Title 15 U. S. C. 1173 is unconstitutional as being in violation of the Tenth Amendment to the Constitution in so far as it undertakes to regulate transactions purely local in their nature and entirely intrastate and transactions which do not directly affect interstate commerce. It is further contended by the defendant in his motion to dismiss that Title 15 U. S. C. 1173 is too vague, indefinite, and uncertain to be enforceable, particularly with reference to the language "in such district."

As this opinion dealing with the constitutionality of, and application of Title 15 U. S. C. 1173 disposes of the case, no discussion is had as to the other grounds of the motion.

The indictment and all counts thereof is based on Title 15 U. S. C. 1173 (Act of Congress of January 2, 1951.). Section 1172 of this Act prohibits the transportation of gambling devices in interstate commerce. It was passed pursuant to the constitutional power of Congress to regulate interstate commerce. Being penal in characer it must be strictly construed.

That Congress has the power to prohibit and regulate the transportation of gambling devices in interstate commerce is clear, and it may regulate to the extent of affecting such intrastate transactions as directly affect interstate commerce, but to regulate trans-

actions purely intrastate or which only indirectly affect
8 interstate commerce would be exceeding the powers of Congress and would render such action unconstitutional. To come within the powers of Congress to regulate intrastate transactions, such transactions must be such as substantially and directly affect interstate commerce, and to extend the Statute here under consideration to purely intrastate transactions would give to Title 15 Section 1173 of the Act an effect beyond the constitutional powers of Congress. While the following decisions are not binding on me, I think their reasonings are sound.

In the case of United States vs. 5 Gambling Devices, Libel for Forfeiture, in the Northern District of Georgia, Judge Sloan, in considering the Statute here involved, ruled: "It is neither shown, or contended that purely intrastate transactions in gambling devices in any way interfere with or obstruct the regulation of such devices in interstate commerce, and to extend the Act to purely intrastate transactions gives to the Act an effect beyond the constitutional power of Congress. The Act does not apply to intrastate transactions."

The Statute under consideration must be valid, if at all, under the Commerce Clause of the Constitution. The power of Congress under this clause is limited to matters directly affecting interstate or foreign commerce. "The power of Congress under the commerce clause is limited to matters directly affecting interstate or foreign commerce, and can not extend to matters the effect of which, whatever its extent, is indirect." James Walter Carter v. Carter Coal Co. et al., 298 U. S. page 238 (21), see page 297.

In the case of United States of America v. 15 Mills Blue Bell Gambling Machines, et al., Libel in Rem, in the Middle District of Georgia, Judge Conger, in considering the Statute here under consideration, ruled:

"The fifth defense is predicated on the theory that the Act under which these proceedings are brought seeks to regulate intrastate commerce, which is beyond the power of Congress to do. This defense is sustained," and ruling that the Statute involved was unconstitutional for this reason, and for the further reason that it was too vague, indefinite, and uncertain because of the language "in such district" contained in the Statute, there being no named or defined district or area to which the words "in such district" could refer.

9 It is not contended by the counsel for the United States that the defendant was a dealer in interstate commerce, and it is conceded that none of the machines allegedly sold by the defendant were ever transported in interstate commerce and that all of his alleged transactions were had wholly within the State of Georgia. Interstate commerce was not involved and not directly

or indirectly affected by the alleged intrastate transactions on the part of the defendant. The Statute under consideration does not apply to intrastate transactions even should it be deemed constitutional.

It seems clear to the Court that the Statute involved in so far as it undertakes to regulate purely intrastate transactions goes beyond the power of Congress under the commerce clause of the Constitution.

The Court is also of the opinion that the Statute is too vague, indefinite, and uncertain in failing to definitely and clearly designate what is meant by the language "In such district," and being a criminal statute it must be strictly construed.

In accordance with the foregoing opinion, it is

Considered, ordered and adjudged by the Court that the motion of the defendant to dismiss the indictment and all counts thereof be, and the same hereby is, sustained and the indictment and all counts thereof is hereby dismissed.

This the 24th day of February 1953.

(Signed) F. M. SCARLETT,
United States District Judge.

[Title endorsement omitted.]

10–11 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order amending judgment and opinion

Filed March 26, 1953

Whereas, this Court on the 25th day of February 1953, entered judgment in the above-entitled cause sustaining the defendant's motion to dismiss the indictment and dismissing said indictment; and

Whereas, said judgment recites in the first part of the second paragraph on page three thereof, the following, to wit:

"It is not contended by the counsel for the United States that the defendant was a dealer in interstate commerce, and it is conceded that none of the machines allegedly sold by the defendant were ever transported in interstate commerce and that all of his alleged transactions were had wholly within the State of Georgia."

It being made to appear to the Court that the wording quoted is an incorrect statement as to what transpired, and counsel for the defendant agreeing,

It is the order and judgment of the Court that the judgment heretofore entered in said cause be, and the same is, hereby modified by deleting therefrom the above-quoted words; and that the

following words be inserted in lieu thereof as a part of said judgment, to wit:

"No allegation is made in the indictment as to any of the sales being interstate commerce, and the Assistant District Attorney conceded that there were no interstate sales."

Let this order be filed of record.

This 26th day of March 1953.

(Signed) F. M. SCARLETT,
United States Judge.

12-23 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed March 26, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Southern Dist ict of Georgia, entered February 25, 1953, dismissing the indictment in the above-entitled case.

(Signed) Robert L. Stern,
ROBERT L. STERN,
Acting Solicitor General,
Department of Justice, Washington, D. C.

Dated March 19, 1953.

24 [Service and appeal papers under Rule 12 omitted in printing.]

25 [Designation of record omitted in printing.]

26 In United States District Court, Savannah Division

[Title omitted.]

Statement of docket entries

1. Indictment returned and filed in open Court on May 26, 1952.
2. Defendant's Motion to Dismiss Indictment filed on November 10th, 1952.
3. Opinion of the Court and order sustaining defendant's motion to dismiss indictment filed on February 25th, 1953.
4. Order of Court amending opinion of the Court entered February 25th, 1953, filed on March 26th, 1953.
5. Notice of Appeal to the Supreme Court of the United States filed by the United States of America on March 26th, 1953.

6. Statement as to Jurisdiction of the Supreme Court of the United States filed on March 26th, 1953.

7. Notice to Appellee of filing of Notice of Appeal, together with acknowledgment of service thereon, filed on March 26th, 1953.

8. Appellant's Designation of the Record on Appeal, together with Appellee's acknowledgment of service thereon, filed on March 26th, 1953.

27 [Clerk's certificate to foregoing transcript omitted in printing.]

29 In the Supreme Court of the United States

No. 730, October Term, 1952

[Title omitted.]
[File endorsement omitted.]

Statement of points to be relied upon and designation of record

Filed May 27, 1953

Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that Congress cannot, in aid of its power to prohibit the shipping of gambling machines in interstate commerce, require dealers in such machines to register with the Attorney General and report all sales, including intrastate deliveries, pursuant to Section 3, Act of January 2, 1951, 64 Stat. 1135, 15 U. S. C. 1173, Supp. V.

2. The District Court erred in holding that the requirement that the dealer register with the Attorney General the addresses of his places of business "in such district" renders the statute void for vagueness.

3. The District Court erred in dismissing the indictment.

30 Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

Robert L. Stern,
Robert L. Stern,
Acting Solicitor General.

May 1953.

33 Supreme Court of the United States

No. 730, October Term, 1952

[Title omitted.]

Order noting probable jurisdiction

May 18, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 731, United States of America, vs. Braun, for argument, and transferred to the summary docket.

U. S. GOVERNMENT PRINTING OFFICE: 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 731

UNITED STATES OF AMERICA, APPELLANT

vs.

MILTON M. BRAUN

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

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1 [Caption omitted in printing.]

1A In United States District Court for the Southern District of Georgia, Savannah Division

No. 13392

Vio: T. 15, U. S. C., Sec. 1173

UNITED STATES OF AMERICA

v.

MILTON M. BRAUN

INDICTMENT

Filed May 13, 1952

COUNT ONE

The Grand Jury Charges:

That from on or about January 3, 1951, to on or about July 25, 1951 MILTON M. BRAUN did, in the Savannah Division of the Southern District of Georgia, unlawfully, wilfully and knowingly engage in the bisines of a dealer in gambling devices without having registered with the Attorney General of the United States his name, trade name, and address of his principal place of business, and the addresses of his places of business in the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT TWO

The Grand Jury Further Charges:

That on or about March 31, 1951, within the Savannah Division of the Southern District of Georgia, the said MILTON M. BRAUN, a dealer in gambling devices, having sold and delivered two gambling devices, to wit: one Mills slot machine, and one Jennings slot machine, to L. R. Grimm, Savannah, Georgia, on or about February 5, 1951, did, unlawfully, wilfully and knowingly fail to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of February 28, 1951, for his place and places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT THREE

The Grand Jury Further Charges:

On or about March 31, 1951, within the Savannah Division of the Southern District of Georgia, the said MILTON M. BRAUN, a

dealer in gambling devices, having sold and delivered nine (9) gambling devices, to wit: Nine Mills slot machines, to Paul Peters, Savannah, Georgia, on or about February 14, 1951, did, 2 unlawfully, wilfully and knowingly fail to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of February 28, 1951, for his place and places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT FOUR

The Grand Jury Further Charges:

On or about April 30, 1951, within the Savannah Division of the Southern District of Georgia, the said MILTON M. BRAUN, a dealer in gambling devices, having sold and delivered Four (4) gambling devices, to wit: Four Mills slot machines, to Paul Peters, Savannah, Georgia, on or about March 9, 1951, did, unlawfully and knowingly fail to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of March 31, 1951, for his place and places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

COUNT FIVE

The Grand Jury Further Charges:

On or about June 30, 1951, within the Savannah Division of the Southern District of Georgia, the said MILTON M. BRAUN, a dealer in gambling devices, having sold and delivered a gambling device, to wit: a Whattling slot machine, to T. C. Smith, Savannah, Georgia, on or about May 10, 1951, did, unlawfully, wilfully and knowingly fail to file with the Attorney General of the United States an inventory and record of sales and deliveries of gambling devices as of May 31, 1951, for his place and places of business within the Southern District of Georgia, in violation of Section 1173, Title 15, U. S. C. A.

A True Bill.

(Signed) F. F. BAGGETT,
Foreman.

J. SAXTON DANIEL,
United States Attorney.

(Signed) Donald H. Fraser,
DONALD H. FRASER,
Assistant United States Attorney.

(Signed) Julian Hartridge,
JULIAN HARTRIDGE,
Assistant United States Attorney.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Motion to dismiss

Filed October 31, 1952

Now comes the defendant in the above entitled cause and moves to dismiss the indictment and for grounds thereof shown and says:

1st: (a) The said law upon which said indictment is based, to wit; Title 15, U. S. C. Section 1173, is unconstitutional in that it requires persons to furnish information on which a criminal case could be made in violation of the Fifteenth Amendment to the United States Constitution to wit: "No person shall be compelled in any criminal case to be a witness against himself."

(b) Said law, construed in connection with the indictment which does not allege interstate commerce or any act of the defendant affecting interstate commerce, is unconstitutional in that it violates the Tenth Amendment to the United States Constitution, to wit: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

2nd: The said indictment fails to allege that defendant first engaged in business on January 2, 1951 and therefore was under no duty to report the alleged sales in Counts Two, Three, Four, and Five on the dates alleged.

3rd: Subject to the foregoing grounds to dismiss the whole indictment and all Five Counts thereof defendant moves to dismiss Counts Two, Three, Four, and Five and for grounds thereof says that these alleged transactions are but one offense all of which are embraced in Count One of the indictment and to allow all Five Counts to stand would place defendant in double jeopardy in violation of the Fifth Amendment of the United States Constitution, to wit: "Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

(Signed) MYRICK & MYRICK,
Defendant's Attorneys.

[File endorsement omitted.]

5 In the United States District Court for the Southern District of Georgia, Savannah Division

Indictment No. 13392

Violation: Title 15, U. S. C., Section 1173

UNITED STATES OF AMERICA

v.

MILTON M. BRAUN

Opinion and judgment

Filed February 26, 1953

STATEMENT OF THE CASE

An indictment in five counts was returned against MILTON M. BRAUN in the District Court of the United States for the Southern District of Georgia, Savannah Division, charging a violation of Title 15, U. S. C. Section 1173.

The first count charges that the defendant was a dealer in gambling devices and failed to register with the Attorney General of the United States.

The other four counts of the Indictment charged that the defendant on various dates sold amounts of gambling devices to named persons, and failed to file an inventory and record of sales and deliveries with the Attorney General.

The defendant filed a motion to dismiss the indictment, on three grounds—one of the grounds being that the Act, Section 1173, did not extend to purely intra-state transactions which do not directly affect interstate commerce, but if the Act was intended to apply to purely intra-state transactions, then the same was unconstitutional because of the tenth amendment to the Constitution. As this opinion deals with the application of the said Act to purely intra-state transactions and the constitutionality thereof under the state of facts as alleged in the indictment, no discussion is had on the other grounds of the motion to dismiss.

The indictment and all counts thereof are based on Title 15, U. S. C., Section 1173. No allegation is made in the indictment as to any of the sales being interstate commerce, and the Assistant District Attorney conceded that there were no interstate sales.

OPINION AND JUDGMENT OF THE COURT

The Act in question, to wit, Title 15, 1171–1175, was passed pursuant to the power of Congress to regulate interstate commerce.

There is no question but that Congress has power to prohibit the transportation of gambling devices in interstate commerce. It is equally true that Congress has the power to regulate intra-state transactions which directly affect interstate commerce. But the power of Congress to regulate these matters cannot extend
6 to matters the effect of which, whatever its extent, is indirect. (See James Walter Carter v. Carter Coal Co., et al., 298 U. S. Page 238 (21), also see page 297.)

In the case of United States v. Five Gambling Devices, Libel for Forfeiture, in the Northern District of Georgia, Judge Sloan, in considering the Statute here involved, ruled: "It is neither shown nor contended that purely intra-state transactions in gambling devices in any way interfere with or obstruct the regulation of such devices in interstate commerce, and to extend the Act to purely intra-state transactions gives to the Act an effect beyond the constitutional power of Congress. The Act does not apply to intra-state transactions."

In the case of United States of America v. 15 Mills Blue Bell Gambling Machines, et al., Libel in Rem, in the Middle District of Georgia, Judge Cooper, in considering the Statute here under consideration, ruled: "The fifth defense is predicated on the theory that the Act under which these proceedings are brought seeks to regulate intra-state commerce, which is beyond the power of Congress to do. This defense is sustained."

In view of the above decisions, and in view of the fact that there are no interstate transactions involved in this case, and the transactions involved in this case were purely intra-state transactions, the Court therefore is of the opinion that Section 1173 has no application to the defendant in this case, since the Statute under consideration does not apply to intra-state transactions which do not directly affect interstate commerce.

It seems clear to the Court that the Statute involved, in so far as it undertakes to regulate purely intra-state transactions which do not directly affect interstate commerce, goes beyond the power of Congress under the Commerce Clause of the Constitution.

In accordance with the foregoing opinion,

It is considered, ordered, and adjudged by the Court, That the motion of the defendant to dismiss the indictment and all the counts thereof, be, and the same is hereby sustained, and said indictment and all counts thereof is hereby dismissed.

This 25th day of February 1953.

(Signed) F. M. SCARLETT,
United States Judge.

[File endorsement omitted.]

7-9 In United States District Court

[Title omitted.]

Notice of appeal

Filed March 26, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Southern District of Georgia, entered February 26, 1953, dismissing the indictment in the above-entitled case.

(Signed) Robert L. Stern,
ROBERT L. STERN,
Acting Solicitor General,
Department of Justice, Washington, D. C.

Dated March 19, 1953.
[File endorsement omitted.]

11 [Service of appeal papers under Rule 12, omitted in printing.]

12 [Designation of record on appeal, omitted in printing.]

13 In United States District Court

[Title omitted.]

Statement of docket entries

1. Indictment returned and filed in open Court on May 13th, 1952.
2. Defendant's Motion to Dismiss Indictment filed on October 31st, 1952.
3. Opinion of the Court and Judgment sustaining Motion to Dismiss indictment filed on February 26th, 1953.
4. Notice of Appeal to the Supreme Court of the United States filed on March 26th, 1953.
5. Statement as to Jurisdiction of Supreme Court of the United States on Appeal filed on March 26th, 1953.
6. Notice to appellee of filing of Notice of Appeal, together with acknowledgment of service thereon, filed on March 26th, 1953.
7. Appellant's Designation of Record on Appeal, together with acknowledgment of service thereon, filed on March 26th, 1953.

14 [Clerk's certificate to foregoing transcript omitted in printing.]

16 In the Supreme Court of the United States

No. 731, October Term, 1952

[Title omitted.]

Statement of points to be relied upon and designation of record

Filed May 27, 1953

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that Congress cannot, in aid of its power to prohibit the shipping of gambling machines in interstate commerce, require dealers in such machines to register with the Attorney General and report all sales, including intrastate deliveries, pursuant to Section 3, Act of January 2, 1951, 64 Stat. 1135, 15 U. S. C. 1173, Supp. V.

2. The District Court erred in dismissing the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necesary for the consideration of the points relied upon.

Robert L. Stern,
Robert L. Stern,
Acting Solicitor General.

May 1953.

[File endorsement omitted.]

19 Supreme Court of the United States

No. 731, October Term, 1952

[Title omitted.]

Order noting probable jurisdiction

May 18, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 730, United States of America, vs. Denmark, for argument, and transferred to the summary docket.